IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1531 OF 2006

M/s.Deepak Auto Agencies . .. Petitioner
v/s.
1. Income Tax officer & ors. .. Respondents

Mr.Arun Sathe, Sr.Advocate i/by Mr.Mandar Vaidya for petitioner.

Mr.S.M.Shah for respondents.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.

DATED : 24th July 2006

P.C. :

1. Rule. Rule is made returnable forthwith. Counsel are heard.

2. The income of the petitioner was assessed for the Assessment Year 1999-2000 and the Deputy Commissioner of Income Tax, who assessed the income, held that the assessee had reduced Rs.4,00,000/- on account of old stocks, but there was no justification to it. He, therefore, made addition of Rs.4,00,000/- while making the assessment.

3. This order was carried in Appeal to the Commissioner of Income Tax (Appeals). The Appeal was allowed by the Commissioner vide his order

dated 31st October 2003. The Revenue carried a further Appeal to the Tribunal and that Appeal is pending. During the pendency of this Appeal filed by the Revenue, a Notice has been issued to the petitioner on 13th February 2006 under Section 148 of the Income Tax Act, 1961. It is this notice which is under challenge in the present petition.

4. Mr.Sathe, learned Counsel appearing for the petitioner, points out that when the proceedings filed by the Department are pending and when the order impugned in the Appeal before the Tribunal is in favour of the assessee, surely, the Notice under Section 148 that the income has escaped and that further action will be taken, cannot be issued.

5. Mr.Shah, learned Counsel appearing for the respondents, points out that the decision of the Commissioner is not on facts and it is only on the ground that the valid notice under Section 143(2) was not issued before the expiry of period of limitation. Be that as it may, the fact remains that the decision of the Assessing Officer was interfered by the Commissioner and that is the order which presently survives. During the pendency of the further proceedings, obviously the

impugned notice could not have been issued.

6. Mr.Sathe has relied upon a decision of this Court in the case of **Ador Technopack Ltd. Ltd. vs. Dr.Zakir Hussein, Deputy Commissioner of Income-Tax & ors. reported in 271 ITR page 50** to the effect that during the pendency of such proceedings the assessment could not be treated as final.

7. In the circumstances, we allow the petition and quash and set aside the Notice dated 13th February 2006.

8. Accordingly, Rule is made absolute as above. No order as to costs.

9. In the event the Revenue succeeds, it will be open to the Revenue to take further appropriate steps.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)